

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CARMEN AGUILAR</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 244,434
<b>CAMBRIDGE SUITES HOTEL</b>	)	
Respondent	)	
AND	)	
	)	
<b>ZURICH AMERICAN INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated June 10, 1999. In the Order, the Administrative Law Judge denied claimant benefits, finding she had failed to provide timely notice of accident pursuant to K.S.A. 44-520. The Administrative Law Judge went on to find that claimant failed to show just cause for the untimely notice and further failed to prove accidental injury arising out of and in the course of employment.

**ISSUES**

The claimant's Application for Review lists notice as the sole issue raised before the Appeals Board. However, in her brief to the Board, claimant also disputes the Administrative Law Judge's findings regarding just cause and accidental injury arising out of and in the course of employment. The Appeals Board will, therefore, consider the following issues on appeal:

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?
- (2) Did claimant provide timely notice of accidental injury pursuant to K.S.A. 44-520?
- (3) If timely notice was not provided, was there just cause for claimant's failure to provide timely notice?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges accidental injury on February 4, 1999, when, while working as a housekeeper for respondent, she injured her cervical, thoracic and lumbar spine while helping move a sofa bed. Claimant alleged she was working with her supervisor, Jocelyn Simpson-Furr, on that date and advised her supervisor immediately of the injury. Ms. Simpson-Furr testified at the preliminary hearing that claimant did not tell her of an injury suffered on February 4, 1999. In addition, Ms. Simpson-Furr denied that she was even in a room with claimant moving a sofa bed on the date of the alleged accident.

Claimant sought no medical treatment and continued performing her regular duties until April 19, 1999. On April 19, claimant advised Ms. Simpson-Furr that she was going to the doctor because of problems associated with her back.

It is significant that on April 16, 1999, Ms. Simpson-Furr approached claimant and advised her that a social security check had uncovered the fact that claimant's social security number was not accurate. Claimant was given 10 days to provide respondent with an accurate social security number. Three days later, claimant first sought medical treatment for the alleged February back injury.

The Administrative Law Judge, in the June 10 Order, found this to be primarily a credibility question, with claimant's testimony contradicting that of her supervisor. The Administrative Law Judge noted the length of time between claimant's injury and the first time she sought medical treatment. The Administrative Law Judge also focused on the circumstances surrounding claimant's request for medical treatment, occurring only three days after the dispute regarding claimant's social security number.

Ms. Simpson-Furr testified that, at the time claimant sought medical treatment in April 1999, she advised Ms. Simpson-Furr that she had been working with an employee by the name of Jackie Martinez at the time of the injury. Ms. Simpson-Furr testified that Ms. Martinez last worked for the hotel in September 1998. Therefore, it was not possible for claimant to have been working with Ms. Martinez on February 4, 1999, the alleged date of accident.

Respondent placed into evidence at the preliminary hearing a document titled Suite Attendant Check List, dated February 4, 1999. This document indicates that claimant was working with an employee by the name of Lourdes and not Martinez on the alleged date of accident. It also indicates that respondent's supervisor, Ms. Simpson-Furr, was not working with claimant on that day. Ms. Simpson-Furr testified that the document also showed that room 624, the room claimant testified having suffered the injury in, did have a sofa. However, room 624 was shown as being occupied and cleaned. Ms. Simpson-Furr testified that when a room is occupied, meaning the occupants intend to remain for another

day, they would not do a full cleaning, involving the moving of the sofa, as the room would contain personal items of the occupants and a full cleaning would neither be possible nor necessary. Therefore, claimant would not have moved the sofa in room 624 on that day.

Claimant also argues that her lack of ability to speak English both inhibited her ability to provide notice and was just cause for claimant's failure to provide notice. In the same paragraph, however, claimant argued that notice was given within 10 days and respondent had actual knowledge of the injury and, therefore, notice was unnecessary.

Ms. Simpson-Furr, claimant's supervisor, testified that she was conversant in Spanish, although not fluent. She regularly supervised Hispanic-speaking employees and needed to be able to converse in Spanish in order to communicate. She had numerous conversations with claimant in Spanish both at the time of claimant's hire and at various times when she supervised claimant's work. She denied having any difficulty conversing with the claimant in Spanish. Claimant in her brief identified Ms. Simpson-Furr as being a non-Spanish-speaking person.

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

The three issues raised by claimant revolve around the credibility of the witnesses testifying before the Administrative Law Judge. The Order of the Administrative Law Judge notes that his decision did hinge to a significant degree on credibility. The Administrative Law Judge pointed out the time lapse between claimant's alleged injury and the first medical treatment being sought, as well as the circumstances surrounding claimant's social security number problems which were followed almost immediately by claimant's decision to seek medical care for the first time after nearly two and a half months.

The Appeals Board has in the past given deference to an administrative law judge's ability to assess the credibility of live testimony witnesses. In this instance, the Administrative Law Judge concluded that the respondent's representative, Ms. Simpson-Furr, was more credible than the claimant. The Appeals Board agrees and finds that claimant has failed to prove that she suffered accidental injury arising out of and in the course of her employment on the date alleged, failed to prove that notice was provided in a timely fashion and further failed to show just cause for the delay in providing notice to respondent of this alleged accidental injury.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated June 10, 1999, should be, and is hereby, affirmed, and an award is denied claimant, Carmen Aguilar, against the

respondent, Cambridge Suites Hotel, and its insurance carrier, Zurich American Insurance Company.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1999.

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BOARD MEMBER

c: Thomas T. Inkelaar, Wichita, KS  
Denise E. Tomasic, Kansas City, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director